

R381-40-9. FACILITY.

This section provides rules and information that apply to the space requirements, structure, layout, and maintenance of the child care facility, both inside and outside.

Studies have shown that the quality of the physical designed environment of early child care facilities is related to children's cognitive, social, and emotional development (e.g., size, density, privacy, well-defined activity settings, modified open-plan space, a variety of technical design features and the quality of outdoor play spaces). CFOC 4th ed. Standard 5.1.2.1 p.p. 216.

Equipment, materials, furnishings, and play areas should be sturdy, safe, and in good repair and should meet the recommendations of the U.S. Consumer Product Safety Commission (CPSC) for control of the following safety hazards. CFOC 4th ed. Standard 5.3.1.1 p.p. 253-254.

- (1) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their local health department within five working days and follow required procedures for remediation of the lead hazard.**

Rationale/Explanation

Ingestion of lead paint can result in high levels of lead in the blood, which affects the central nervous system and can cause mental retardation. Paint and other surface coating materials should comply with lead content provisions of the Code of Federal Regulations, Title 16, Part 1303. Lead is a neurotoxin. Even at low levels of exposure, lead can cause reduction in a child's IQ and attention span, and result in reading and learning disabilities, hyperactivity, and behavioral difficulties. Lead poisoning has no "cure." These effects cannot be reversed once the damage is done, affecting a child's ability to learn, succeed in school, and function later in life. Other symptoms of low levels of lead in a child's body are subtle behavioral changes, irritability, low appetite, weight loss, sleep disturbances, and shortened attention span. CFOC 4th ed. Standard 5.2.9.13 p.p. 251.

Lead-based paint and lead-contaminated dust are the most hazardous sources of lead poisoning in children and may be found in:

- House paints and paint used on outdoor play equipment made before 1978
- Imported vinyl mini-blinds made before 1997
- Imported toys

Compliance Guidelines

- Providers must regularly inspect inside and outside walls and play surfaces that are accessible to children for damaged (peeling, flaking, or chalking) paint.
- Any area with damaged paint should be tested for lead. If there are four areas with damaged paint, then there must be four tests for lead.
- If lead-based paint is found and the building or structure was built before 1978, the local health department or the Utah Department of Environmental Quality (DEQ) should be contacted for how to remove or repair the lead-based paint.
- According to DEQ regulations, if there is an area with 6 square feet or more of damaged paint indoors or an area with 20 square feet or more of damaged paint outdoors, then correction must be done by a certified individual.
- There must be documentation that paint was tested and it contains no lead, or that paint containing lead was repaired according to DEQ or local health department instructions.
- More information is available from the [United States Environmental Protection Agency](https://www.epa.gov/lead).

Risk Level

High

Corrective Action for 1st Instance

Citation and CMP Warning when:

- A building or play structure constructed before 1978 has untested failing paint in an area accessible to children.
- Any area has tested paint that contains lead and it has not been appropriately remediated.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning when:

- A building or play structure constructed before 1978 has untested failing paint in an area inaccessible to children.

- (2) The provider shall ensure that each room and indoor area that is used by children is ventilated by mechanical ventilation, or by windows that open and have screens.

Rationale/Explanation

As much fresh outdoor air as possible should be provided in rooms occupied by children. Screened windows should be opened whenever weather and the outdoor air quality permits or when children are out of the room. Indoor air should be kept as free from unnecessary chemicals as possible, including those emitted from air fresheners and other fragrances, cleaning products containing chemicals, aerosol sprays, and some furnishings.

The health and well-being of both the staff and the children can be greatly affected by indoor air quality. The air people breathe inside a building is contaminated with microbes shared among occupants, chemicals emitted from common consumer products and furnishings, and migration of polluted outdoor air into the facility. Air quality significantly impacts people's health. The health impacts from exposure to air pollution (indoor and outdoor) can include: decreased lung function, asthma, bronchitis, emphysema, learning and behavioral disabilities, and even some types of cancer. CFOC 4th ed. Standard 5.2.1.1 p.p. 224.

Compliance Guidelines

- Areas used by children must be free of signs of inadequate ventilation such as mold growing in corners, a damp or musty smell, or a room with a temperature that varies greatly from the temperature of other rooms in the building.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning when:

- A room or area used by the children does not have either mechanical ventilation or a window to open.
- There are signs of inadequate ventilation in a room used by children.
- The ventilation is provided by an open, unscreened window that is accessible to children, and the room or area is above the facility's ground-floor level.

Risk Level

Low

Corrective Action for 1st Instance

Warning when:

- The ventilation is provided by an open, unscreened window that is accessible to children, and the room or area is on the facility's ground floor or basement level.

- (3) The provider shall ensure that windows and glass doors within 36 inches from the floor or ground are made of safety or tempered glass, or have a protective guard.

Rationale/Explanation

The purpose of this rule is to prevent children from accidentally breaking and being cut by a glass window or door. Glass panels can be invisible to an active child. When a child collides with a glass panel, serious injury can result from the broken glass. CFOC 4th ed. Standard 5.1.3.4 p.p. 218.

Compliance Guidelines

- This rule applies to windows and glass doors that are accessible to children in care, both inside the facility and in the outdoor areas used by children.
- If a window has a double pane (such as a storm window) and both sides of the window are accessible to children, both panes must be made of safety glass or have a protective guard.
- All windows and glass surfaces that are within 36 inches of the floor or ground, and are in areas that are accessible to children will be inspected by CCL.
- The height of the window or glass surface will be measured from the floor or ground to the glass, and will include the width of any ledge, window sill, or frame of the window.
- CCL will document when the glass has been inspected and is in compliance with rule.
- If the glass in a window or door has been replaced or the protective guard has changed, the glass will be reinspected at a subsequent inspection.
- The following will not be inspected:
 - Fish tanks
 - Mirrors
 - Windows and glass surfaces in staff offices or lounges unless the areas are used by the children
 - Glass surfaces in lobbies where children are never without adult supervision
 - Glass block walls or windows
- Acceptable protective guards or barriers include:
 - Screens that cover windows at least 36 inches up from the floor or ground
 - Furniture of any height that blocks the glass surface within four inches of its bottom and sides
 - A child safety gate that is secured in the window sill or in front of the window
 - A sheet of acrylic attached over the glass
 - Bushes when the combined height and depth of the branches is at least 36 inches
 - Solid window shutters
 - A fixture, such as a planter box, with a combined height and depth of 36 inches (minimum 18 inches high) that blocks the glass within four inches of its bottom and sides
- If protective film is applied, it needs to be on only one side of single pane windows and both sides of double pane windows when both sides are accessible to children. The safety film must be able to prevent glass from falling should the glass be broken.
- This rule is in compliance when:
 - The glass is marked as safety or tempered glass by the manufacturer,
 - There is documentation that verifies that the glass is safety or tempered glass,
 - Protective film is applied to the window or door to prevent it from shattering into loose shards if it breaks, or
 - The window or door has a protective guard or barrier that prevents children from contacting the glass.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning

- (4) The provider shall ensure that rooms and areas have adequate light intensity for the safety of the children and the type of activity being conducted.

Rationale/Explanation

These levels of illumination facilitate cleaning, reading, comfort, completion of projects, and safety. Too little light, too much glare and confusing shadows are commonly experienced lighting problems. Inadequate artificial lighting has been linked to eyestrain, headache, and non-specific symptoms of illness. Lighting levels should be reduced during nap times to promote resting or napping behavior in children. During napping and rest periods, some degree of illumination must be allowed to ensure that staff can continue to observe children. CFOC 4th ed. Standard 5.2.2.1 p.p. 230-231.

Compliance Guidelines

It is a rule violation if an area being used by children is so dark that it is unsafe to go in or out due to inadequate lighting.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning when:

There is inadequate lighting in a diapering or food preparation area.

Risk Level

Low

Corrective Action for 1st Instance

Warning when:

There is inadequate lighting in any other area used by the children.

- (5) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

Rationale/Explanation

A draft-free temperature of 68°F to 75°F should be maintained at thirty to fifty percent relative humidity during the winter months. A draft-free temperature of 74°F to 82°F should be maintained at thirty to fifty percent relative humidity during the summer months. CFOC 4th ed. Standard 5.2.1.2 p.p. 225.

Compliance Guidelines

- The air temperature may be measured at table height when a room seems to be too hot or cold.

Risk Level

Low

Corrective Action for 1st Instance

Warning when:

- The temperature is out of range

(6) The provider shall ensure that there is a working telephone at the facility, in each vehicle while transporting children, and during offsite activities.

Rationale/Explanation

The facility should provide at all times at least one working non-pay telephone or wireless communication device for general and emergency use. CFOC 4th ed. Standard 5.3.1.12 p.p. 259.

Compliance Guidelines

- A cell phone meets the requirements of this rule as long as there is a phone in the facility, each vehicle, and at offsite activities whenever children are present.
- A long range two-way communication device also meets the requirements of this rule.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning

(7) The provider shall ensure that there is at least one working toilet and one working sink when there are up to 15 children in the facility, and at least two working toilets and two working sinks when there are more than 15 children present in the facility.

Rationale/Explanation

Children use the bathroom often and cannot wait long when they have to use the toilet. Sinks should be nearby to facilitate handwashing. CFOC 4th ed. Standard 5.4.1.6. p. 261.

Compliance Guidelines

- The required number of working toilets and working sinks must be available for the children to use. The number of toilets and sinks is used as a factor in determining the maximum capacity of the facility.
 - A urinal may be counted as a toilet for up to 50% of the required number of toilets.

- For large sinks that have two or more faucets in them, each separate faucet counts as one sink.
 - any working sink (including portable) with accessible clean water is in compliance.
- It is out of compliance with 40-9(10) if there is only one toilet at the facility and it is not in working condition. In this case, the repair must be made within one hour in order to provide child care services.
 - The following are not acceptable toilets or sinks:
 - Indoor and outdoor portable toilets, such as chemical toilets, composting toilets, and bucket toilets
 - A portable sink with no water in it

(8) If there is an outdoor area in the facility, the provider shall ensure that the outdoor area:

- (a) is safely accessible to the children;**
- (b) is enclosed within a fence, wall, or solid natural barrier that is at least four feet high; and**
- (c) has no gaps five by five inches or greater in or under the fence or barrier.**

Rationale/Explanation

The facility or home should be equipped with an outdoor play area that directly adjoins the indoor facilities or that can be reached by a route that is free of hazards. CFOC 4th ed. Standard 6.1.0.1 p.p. 282.

This standard helps to ensure proper supervision and protection, prevention of injuries, and control of the area. An effective fence is one that prevents a child from getting over, under, or through it and keeps children from leaving the fenced outdoor play area, except when supervising adults are present. Although fences are not childproof, they provide a layer of protection for children who stray from supervision. CFOC 4th ed. Standard 6.1.0.8 p.p. 286-287.

Fences and barriers should not prevent the observation of children by caregivers/teachers. If a fence is used, it should conform to applicable local building codes in height and construction. CFOC 4th ed. Standard 6.1.0.8 p.p. 286.

Compliance Guidelines

Safely Accessible

- The route from the building to the outdoor area must be safe. For example, an outdoor area is not safely accessible if children must walk across an unsafe deck (such as one with broken boards or holes in it) or cross a driveway where cars or other motor vehicles come and go.
- The following examples of outdoor areas that are safely accessible include:
 - An outdoor area that is directly adjacent to the building, so that children exit the facility

straight into the play area.

- A large, open-air deck that children access directly from the building as long as the deck has the required space per child and meets other licensing requirements.
- An outdoor area on the premises that is reached by way of a fenced walkway.
 - When the building and entire outdoor area are surrounded by fencing.
 - An outdoor area on the premises that can be accessed by a sidewalk, as long as the sidewalk is not near a street that has a designated speed of 25 MPH or greater, a water or other hazard, or does not pass through a parking lot.
 - An outdoor area on the premises that is accessed by blocking off a portion of a parking lot with traffic cones to create a walkway.

Enclosed

- The entire perimeter of the fence must be at least four feet (48 inches) high.
- The fence must be measured on each side at its lowest point, from the side the children play on, and includes measuring a gate.
- If a fence or wall was previously approved by CCL, then the barrier's height is considered in compliance as long as:
 - The barrier has not been replaced, repaired, or altered; and
 - All areas of the barrier measure within five inches of the required four foot height. This five inch allowance only applies to a previously-approved barrier that has not changed since the approval; it does not apply to barriers formed by bushes or shrubs, etc. If the fence or wall was replaced, repaired, adjusted, or it has changed since the last CCL inspection, it must meet the four foot height requirement.
- It is not a rule violation if a fence is lower than 48 inches in height due to temporary weather conditions, such as snow on the ground at the base of the fence.
- Bushes will be considered a natural barrier when there are no gaps five by five inches or greater.
- When a ramp (leading to the outdoor area) is separated from the area with a four foot high gate that is closed, the height of a fence on the ramp does not need to be assessed. If there is no gate, the gate is open, or is less than four feet high, then the fence on the perimeter of the ramp (that encloses the ramp and outdoor area) must be at least four feet high. The interior fencing on the ramp does not need to be assessed.
- Interior fences within the four foot perimeter fence do not need to be 48 inches high, unless otherwise required in rule.
- Any temporary fencing that is used to comply with this rule must:
 - Always be set up when children are in the outdoor area.
 - Meet the fencing height requirements as described above.

Gaps

- The entire perimeter of all required fences and barriers must be checked for gaps, including

fences enclosing the outdoor area and any interior fences required to separate children from hazards even if previously approved.

- The size of any gap in or under the fence should be measured without pushing on the fence. (Licensors will use a gap-measure tool)

Risk Level

High

Corrective Action for 1st Instance

Citation and CMP Warning when:

- Any required fence or barrier has a five by five inch gap or greater that is lower than 36 inches.
- There is no fence or barrier enclosing the outdoor area, or an area of the fence or barrier is less than 36 inches high.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning when:

- An area of the fence or barrier is less than 48 inches high.
- Any required fence or barrier has a five by five inch gap or greater that is 36 inches or higher.

(9) If there is a swimming pool on the premises that is not emptied after each use, the provider shall:

- (a) meet applicable state and local laws and ordinances related to the operation of a swimming pool;**
- (b) maintain the pool in a safe manner; and**
- (c) when not in use, cover the pool with a commercially-made safety enclosure that is installed according to the manufacturer's instructions, or enclose the pool within at least a four-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises.**

Rationale/Explanation

Where applicable, swimming pools and built-in wading pool equipment and materials should meet the health effects and performance standards of the National Sanitation Foundation or equivalent standards as determined by the local regulatory health authority. Proper pool operation and maintenance minimizes injuries. CFOC 4th ed. Standard 6.3.3.3 p.p. 300-301.

Compliance Guidelines

- All locks or latches on the fence or safety cover must be properly locked.
 - A pool fence must be locked with a key or combination lock.
 - For a pool cover, every latch must be engaged and all sides must be secured.

- When the pool is covered with a safety cover, commercially made product documentation must be available for review by CCL.
- If the law or rule from one agency is stricter than another, the provider must follow the stricter of the two regulations.

Risk Level

High

Corrective Action for 1st Instance

Citation and CMP Warning

(10) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

- (a) ceilings, walls, and floor coverings;**
- (b) lighting, bathroom, and other fixtures;**
- (c) draperies, blinds, and other window coverings;**
- (d) indoor and outdoor play equipment;**
- (e) furniture, toys, and materials accessible to the children; and**
- (f) entrances, exits, steps, and walkways including keeping them free of ice, snow, and other hazards.**

Rationale/Explanation

Messy play and activities that lead to soiling of floors and walls is developmentally appropriate in all age groups, but especially among very young children, the same group that is most susceptible to infectious disease. These factors lead to soiling and contamination of floors and walls. A smooth, nonporous surface prevents deterioration and mold and is easier to clean and sanitize; therefore, helps prevent the spread of infectious diseases. To avoid transmission of disease within the group, and to maintain an environment that supports learning cleanliness as a value, all surfaces should be kept clean. CFOC 4th ed. Standard 5.3.1.6 p.p. 256-257.

Proper maintenance is a key factor when trying to ensure a safe play environment for children. Each playground is unique and requires a routine maintenance check program developed specifically for that setting. CFOC 4th ed. Standard 5.7.0.2 p.p. 277.

All walking surfaces, such as walkways, ramps, and decks, should have a non-slip finish and be free of loose material (e.g., gravel, sand), water, and ice. Sand may be used on walkways during ice and snow conditions. All walking surfaces and other play surfaces should be free of holes and abrupt irregularities in the surface. Slippery and uneven walking surfaces can lead to injury even during activities of children and adults that do not involve play. CFOC 4th ed. Standard 5.1.6.4 p.p. 223.

Compliance Guidelines

- All indoor and outdoor building areas and structures must be in good repair. This includes all indoor and outdoor play equipment and inside and outside entrances, exits, steps, and walkways used by children.
- The provider must ensure that no play equipment or equipment component could fail or otherwise cause injury from inadequate maintenance such as:
 - Missing, bent, broken, or worn out components
 - Loose hardware or missing nuts or bolts
 - Excessive wear on any part of the equipment
 - Rusted or corroded metal
 - Wood that is rough or splintery
- If equipment is in a state of disrepair and is no longer sturdy or safe, it should be made inaccessible to children until it can be fixed or discarded.
- When hooks, such as C hooks, are open to the point that equipment could come out of the gap, the equipment will be considered not to be maintained in good repair.
- During and immediately after a snowstorm, the provider will be allowed a reasonable amount of time to remove snow from outdoor exit areas, stairs, and walkways to prevent a buildup of snow and ice.
- In case of emergencies, all walkways, exits, and stairways must be free of ice and snow even if the children will not be going outside.
- Walkways must be cleared to a width of at least 3 feet and for a distance of at least 6 feet from the building.

Risk Level

High

Corrective Action for 1st Instance

Citation and CMP Warning when:

- Children were exposed to asbestos.
- A child is unable to use a toilet or handwashing sink when necessary due to equipment failure or breakdown.
- The only toilet in the facility was broken while children were in care and the toilet was not repaired immediately (within one hour). Refer to 40-9(7).

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning when:

- The presence of asbestos was not immediately corrected, but children were not exposed.
- Lack of maintenance could cause equipment failure.
- There is a buildup of ice in entrances, exits, steps, and walkways used by children.

- There is a missing step or unstable stairs that must be used to enter the facility or access the outdoor area.

Risk Level

Low

Corrective Action for 1st Instance

Warning for other hazards that require maintenance including:

- Exposed fiberglass insulation
- Heat vents that are missing covers
- Cracked or damaged flooring that could cause tripping
- Leaking plumbing (with the exception of a leaking faucet)
- An exposed fluorescent light tube with no covering on the fixture
- Draperies, blinds, or other window coverings that require maintenance including torn draperies or broken blinds that a child could become entangled in
- Wooden equipment that is rough or has splinters
- Cracks in equipment that could pinch a child's skin

(11) The provider shall ensure that accessible raised decks or balconies that are five feet or higher, and open stairwells that are five feet or deeper have protective barriers that are at least three feet high.

Rationale/Explanation

Children falling from elevated play areas may suffer fatal head injuries. CFOC 4th ed. Standard 6.1.0.4 p.p. 285.

Compliance Guidelines

- When there is a lip on the edge of the stairwell, the depth is measured from the top of the lip down to the bottom of the stairs.
- Barriers need to be at least three feet (36 inches) high measured from the surface where a person could fall from.

Risk Level

High

Corrective Action for 1st Instance

Citation and CMP Warning when:

- No barrier, or barrier is under 24 inches

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning when:

- A required protective barrier has a gap that is five by five inches or greater in diameter.
- A required protective barrier is under three feet high but is at least 24 inches.

- (12) If the facility is subdivided, any part of the building is rented out, or any area of the facility is shared including the outdoor area, the department may inspect the entire facility and the provider shall ensure that covered individuals in the facility comply with the requirements under R381-40, except when the following conditions are met:
- (a) there is a separate entrance for the child care program;
 - (b) there are no connecting interior doorways that can be used by unauthorized individuals;
and
 - (c) there is no shared access to the outdoor area used for child care.

Rationale/Explanation

It is essential that any area on the provider's premises must be a safe and healthy environment when accessible to children. This includes rooms, offices, and other areas that are occupied by others, but can be accessed by children in care.

Compliance Guidelines

- CCL is not required to inspect the parts of the facility that are subdivided and/or rented out when 1) all of the requirements of this rule are met, and 2) the occupants in the subdivided, rented, or shared part of the facility are not required to have background checks.
- If any of the above requirements are not met, CCL will:
 - Inspect the entire facility including areas that may be subdivided, rented out, or shared.
 - Verify in the CCL App that all covered individuals in the facility have passed a background check.
- The entire facility will not be inspected if the first two conditions are met.

Risk Level & Corrective Action for 1st Instance

The corrective action will be based on the severity of harm that was caused or likely to be caused as a result of a rule violation.